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Supreme Court of the United States

OCTOBER TERM, 1937.
No. 34.

WORCESTER COUNTY TRUST COMPANY, Executor,

Petitioner,

vs.

RAY L. RILEY, Controller of the State of California, et al.,

Respondents.

On Certiorari to the United States Circuit Court of Appeals for the First Circuit

BRIEF AS *AMICI CURIAE* OF THE STATES OF NEW JERSEY, ARKANSAS, NORTH CAROLINA, COLORADO, FLORIDA, IDAHO

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OCTOBER TERM, 1937.

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WORCESTER COUNTY TRUST COMPANY, Executor,

Petitioner,

vs.

RAY L. RILEY, Controller of the State of California; W. H. H. GENTRY, Inheritance Tax Attorney of the State of California; FRANK P. SPROUL, Inheritance Tax Appraiser of the State of California; and HENRY L. LONG, Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts,

Respondents.

On Certiorari to the United States Circuit Court of Appeals for the First Circuit

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BRIEF AS *AMICI CURIAE* OF THE STATES OF NEW JERSEY, ARKANSAS, NORTH CAROLINA, COLORADO, FLORIDA, IDAHO

THE OPINIONS OF THE COURTS BELOW

The opinion of the District Court for the District of Massachusetts (Brewster, D. J.) (R. 26) is reported in 14 F. Supp. 754. The opinions of the Circuit Court of Appeals for the First Circuit (Bingham and Wilson, JJ.; Morton, J., dissenting) (R. 43, 57) are reported in 89 F. (2d) 59, 68. The order granting *certiorari* and admitting Henry L. Long, Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts, as a party respondent (R. 61) is reported in 301 U. S. —. The order denying *certiorari* before final decree of the Circuit Court of Appeals is reported in 299 U. S. 567.

STATEMENT

The purpose of petitioner's bill, in the nature of a bill of interpleader and allegedly filed pursuant to the provisions of section 24 (26) of the Judicial Code (28 U. S. C., sec. 41 (26)) as amended (Act of Cong. January 20, 1936, c. 13, sec. 1, 49 Stat. 1096), is to determine the legal domicile of petitioner's testator and the amount of domiciliary taxes for which his estate is liable, and to obtain permanent injunction against such of respondents as represent the non-domiciliary State, restraining them from taking any action to collect inheritance taxes based on testator's domicile therein.

The facts of the case are sufficiently stated in the briefs of the principal parties and need not be reiterated here.

The States of New Jersey, Arkansas, North Carolina, Colorado, Florida and Idaho, are vitally interested in the outcome of this litigation because of the pendency of similar

suits in which they are involved,[1] or because of the presence of proceedings pending before their taxing officials in which domicile is an issue.

ARGUMENT

Summary of Argument:

1. Postulates accepted by the parties and the courts below.
2. Because of the inherent nature of an interpleader suit, at least one State must become a party respondent.
3. A State is not a citizen within the meaning of the diversity of citizenship clause of the Interpleader Act.
4. The Eleventh Amendment precludes the interpleading of individuals against a sovereign State.
5. This case is not controlled by *City Bank Farmers' Trust Co.* vs. *Schnader.*
6. The Interpleader Act, as amended, was never intended to apply to a suit of the nature of the one *sub judice.*

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[1] *Alpin J. Cameron, Executor, etc., Complainant, vs. Charles J. Margiotti, individually and as Attorney-General of the Commonwealth of Pennsylvania, et al., and David T. Wilentz, individually and as Attorney-General of the State of New Jersey, et al., Respondents,* (December Term, 1936, No. 9639) now pending in the United States District Court for the Eastern District of Pennsylvania; the purpose of which is to determine the State entitled to collect resident inheritance taxes.

POINT I

POSTULATES ACCEPTED BY THE PARTIES AND THE COURTS BELOW

In the prosecution of this suit, it appears that the following postulates, deeply rooted in the issues presented, have been accepted by the parties and the courts below alike:

(a) That a State, because of the Eleventh Amendment, is not subject to suit in the federal courts by a citizen of another State, or one of its own citizens, without its consent.

Missouri vs. *Fiske,* 290 U. S. 18, 25, 26.
Ex Parte State of New York, No. 1, 256 U. S. 490, 497.
Monaco vs. *Mississippi,* 292 U. S. 313, 329, 330.

(b) That a suit against officers and agents of a State acting *wrongfully,* i. e., in an *authorized* manner under an *invalid* statute,

Terrace vs. *Thompson,* 263 U. S. 197, 214;
Public Service Co. vs. *Corboy,* 250 U. S. 153, 159;
Cavanaugh vs. *Looney,* 248 U. S. 453, 456;
Ex Parte Young, 209 U. S. 123, 149-160;
Smyth vs. *Ames,* 169 U. S. 466, 518, 519;

or, in an *unauthorized* manner under a *valid* statute,

Sterling vs. *Constantin*, 287 U. S. 378, 393;
Greene vs. *Louisville & Interurban R. Co.*, 244 U. S. 499, 507;
Reagan vs. *Farmers Loan & Trust Co.*, 154 U. S. 362, 390;

is not a suit against the State.

(c) That a suit against officers and agents of a State acting *rightfully*, i. e., pursuant to authority conferred by a *valid* statute, is a suit against the State.

In re Ayers, 123 U. S. 443, 505-507.
Ex Parte State of New York, No. 1, 256 U. S. 490, 500.

(d) Whether a suit is, in fact, against a State is not to be determined by the mere names of the titular parties, but by the essential nature and effect of the proceeding as they appear from the entire record.

Ex Parte State of New York, No. 1, 256 U. S. 490, 500.
Hopkins vs. *Clemson College*, 221 U. S. 636, 642.

(e) A State is not a citizen.

City Bank Farmers' Trust Co. vs. *Schnader*, 291 U. S. 24, 29.
State Highway Commission vs. *Utah Construction Co.*, 278 U. S. 194, 199, 200.

And the bill appears to be based upon the premise that the group of taxing officials representing the State of California, *or* the taxing official representing the State of Massachusetts, is acting rightfully, and that the State

which it or he represents has a valid claim to all or some portion of the fund interpleaded for domiciliary inheritance taxes.

The District Court upheld jurisdiction, applying postulate (b), while the Circuit Court denied jurisdiction, applying postulates (a), (c), (d) and (e).

POINT II

BECAUSE OF THE INHERENT NATURE OF AN INTERPLEADER SUIT, AT LEAST ONE STATE MUST BECOME A PARTY RESPONDENT

As observed in the dissenting opinion of Judge Morton (R. 57, 58):

> "* * * It is characteristic of bills in the nature of interpleader under this statute, that the plaintiff concedes indebtedness to one or the other of the claimants, but denies indebtedness or obligation to each one separately."

And, again, that it (R. 58):

> "* * * is inherent in suits in the nature of interpleader, that one claimant is adjudged to have a good claim against the plaintiff, and the other not. * * *"

Because this is so, does not the solution of the issue here involved lie in the answer to the simple *quaere,* Is it possible to bring a suit of this nature to a final conclusion without deciding that one group of officials is acting rightfully? If the answer be—and it would seem to be inevitable—that the suit may not be finally concluded without reaching such a determination, then it must necessarily

follow that it cannot be maintained in face of the Eleventh Amendment, because the instant it is determined that one group does not have a good claim against the plaintiff and, therefore, is acting wrongfully, and that the other group does have a good claim against the plaintiff and is, therefore, acting rightfully, it is made clear that individuals are being impleaded against a State.

Even the rule that jurisdiction is to be determined by the allegations of the bill and "not by the way the facts turned out or by a decision on the merits" (*Mosher* vs. *Phoenix*, 287 U. S. 29, 30), would not appear to change the answer, since it is clear from the bill, *and it is also as clear from the start of the suit as it would be at the end*, that at least one of the two groups of State officials must be held to have acted rightfully and, therefore, that the State which it represents must finally be drawn into the litigation if an effective disposition thereof is to be had.

The District Court, in reaching the conclusion that it had jurisdiction, recognized that it could not adjudicate beyond a determination of the legal domicile of the testator at the time of his death. Judge Brewster, in his opinion, says that (R. 37):

> "• • • I do not think the court, in these proceedings, can go so far as to adjudicate the exact amount of the tax due to each State. • • •"

And Judge Morton, in his dissenting opinion, observes that (R. 58):

> "• • • As to one or the other of the claimants, the plaintiff's allegation that he is acting unconstitutionally and in violation of law, is bound to fail, and as to that one the suit will then be dismissed because he will be, legally speaking, the State, of which he is an official acting in the proper performance of his legal duty; • • •"

These would seem to be unqualified admissions that a State must ultimately come into the suit, and that when it does, the court may act no further.

POINT III

A STATE IS NOT A CITIZEN WITHIN THE MEANING OF THE DIVERSITY OF CITIZENSHIP CLAUSE OF THE INTERPLEADER ACT

Diversity of citizenship between the *claimants* is an indispensable prerequisite to the maintenance of a suit under this section of the Code.

Eagle, Star & British Dominions vs. *Tadlock*, 14 F. Supp. 933, 938-940.

Section 24 (26) of the Judicial Code, as amended (U. S. C. Title 28, sec. 41 (26)) provides that:

> "The district courts shall have original jurisdiction as follows:
>
> • • •
>
> "(26) ORIGINAL JURISDICTION OF BILLS OF INTERPLEADER, AND OF BILLS IN THE NATURE OF INTERPLEADER —Twenty-sixth.—(a) Of suits in equity begun by bills of interpleader or bills in the nature of bills of interpleader • • • if—
>
> "(i) Two or more adverse claimants, *citizens of different States*,[1] are claiming to be entitled to such money or property • • • ;"

[1] All emphasis herein is by *amici curiae*.

As hereinbefore pointed out, a State is not a citizen *and even its consent to suit does not make it such.*

> *State Highway Commission* vs. *Utah Construction Co.*, 278 U. S. 194, 199, 200.
> *Minnesota* vs. *Northern Securities Co.*, 194 U. S. 48, 62-63.
> *Postal Telegraph Cable Co.* vs. *Alabama*, 155 U. S. 482, 487.

As ruled by this court in *State Highway Commission* vs. *Utah Construction Co., supra* (pp. 199, 200):

> "* * * No consent by the State to submit itself to suit could affect the question of diverse citizenship."

This rule follows the familiar principle that jurisdiction can never be conferred upon a federal court by consent of the parties.

> *Minnesota* vs. *Northern Securities Co.*, 194 U. S. 48, 62.
> *United States* vs. *Corrick*, 298 U. S. 435, 440.

The action, therefore, of the Commissioner of Taxation of the State of Massachusetts in filing a general appearance and answer[2] to the bill (R. 20-22), amounting, possibly, to consent of the State to be sued, does not fulfill the jurisdictional requirement of diversity of citizenship between the claimants.

Since this is a statutory proceeding, even the presence of a substantial federal question could not alter the situation, because the act does not confer jurisdiction upon the

[2] A situation, incidentally, which is not present in *Cameron* vs. *Margiotti, et al.*, (see ibid. p. 3) where the taxing officials of both States appeared specially and filed motions to dismiss for lack of jurisdiction.

District Court where there is diversity of citizenship, *or*, where a federal question is involved. A federal question, under the statute, is not essential, and the presence of such a question cannot, therefore, cure the defect arising from the absence of diversity of citizenship between the claimants.

It is not to be understood from what has just been said that there is, in fact, a federal question present. As observed by the Circuit Court (R. 52), the bill does not allege action by either group of officials under an unconstitutional statute, or the application in an unconstitutional manner of a constitutional statute. There is no claim that the laws of California or Massachusetts are invalid, or that either or both of the groups has arbitrarily, and without evidence, determined that the testator's domicile was within their respective States.

POINT IV

THE ELEVENTH AMENDMENT PRECLUDES THE INTERPLEADING OF INDIVIDUALS AGAINST A SOVEREIGN STATE

Assuming (without, of course, conceding) that the Interpleader Act is sufficiently broad to cover a suit of the nature of the instant one, then the act is unconstitutional because it authorizes a suit against a State by a citizen or citizens of another State in violation of the Eleventh Amendment. As hereinbefore urged, it is inevitable that a State must be drawn into this litigation at some stage. The absence, as pointed out by the Circuit Court, of allegations of unconstitutionality of statutes or arbitrary actions by the State officers under constitutional statutes precludes any claim that respondents are acting wrongfully and, therefore, are acting for themselves and not for the States which they represent.

It would seem certain that petitioner's suit is caught between the fundamental principles governing equitable interpleader, which likewise control statutory interpleader,

> *Eagle, Star & British Dominions* vs. *Tadlock*, 14 F. Supp. 933, 935;
> *Klaber* vs. *Maryland Casualty Co.*, 69 F. (2d) 934, 939;

and the provisions of Article III, sec. 2 of the Constitution of the United States, the Eleventh Amendment thereof, and section 233 of the Judicial Code (U. S. C. Title 28, sec. 341). If the bill, in an attempt to avoid the mandate of the Eleventh Amendment; alleges that the action of both groups of State officers, or the statutes under which each purports to act, is unconstitutional, then it is not one in the nature of a bill of interpleader, since complainant would thereby deny the existence of two or more claimants capable of interpleading, thus destroying the very foundation upon which a bill of interpleader or a bill in the nature thereof rests.

> *Klaber* vs. *Maryland Casualty Co.*, 69 F. (2d), 934, 937.

It is essential to the maintenance of such a suit that complainant does not dispute his liability to someone for the fund attempted to be interpleaded.

> *Connecticut General Life Insurance Co.* vs. *Yaw*, 53 F. (2d) 684, 686.
> *Smith* vs. *Mosier*, 169 Fed. 430, 442.

If, on the other hand, it alleges the presence of claims to domiciliary taxes by each group, without charging that their actions or the statutes under which they claim to act

are unconstitutional, then the bill is objectionable on the ground that it, in fact, involves the States and not the officers and is, therefore, in violation of Art. III, sec. 2 of the Constitution of the United States and section 233 of the Judicial Code (U. S. C. Title 28, sec. 341) which vest the United States Supreme Court with exclusive jurisdiction of controversies between States. And should the bill take the middle course by alleging that one or the other of the groups is acting in violation of complainant's constitutional rights, the suit then becomes one to implead citizens of another State against a State, which, of course, cannot be maintained in face of the Eleventh Amendment.

It is made perfectly clear by the many decisions of this court, that State officers may be sued, without involving the State, only where it is alleged that they are proceeding in an unauthorized manner, i. e., under color of an invalid law or in excess of their authority under a valid law. And, even *Ex Parte Young,* 209 U. S. 123, so strongly relied upon by petitioner and the District Court is not otherwise, in view of the presence in that case of unfrivolous questions involving the constitutionality, under the federal constitution, of State legislation and orders of State administrative agencies issued thereunder. This court in *Harkrader* vs. *Wadley,* 172 U. S. 148 (at p. 169) said that:

> "No case can be found where an injunction against a State officer has been upheld where it was conceded that such officer was proceeding under a valid State statute. * * *"

The only possible exception to this rule is where the *action* of the State officer is in itself alleged to be unconstitutional.

Greene vs. *Louisville & Interurban R. Co.,* 244 U. S. 499.

Reagan vs. *Farmers Loan & Trust Co.,* 154 U. S. 362.

The determination of the Circuit Court of Appeals to the effect that the bill does not allege that the tax statutes of the two States are unconstitutional, or charge that either or both of the groups of tax officials is acting in violation of the laws of their respective States, or that they have determined the question of domicile arbitrarily and without substantial evidence to support such determination, and that the suit, therefore, in substance, amounts either to an attempt to implead the States of California and Massachusetts or to implead one or the other of said States against individual citizens, seems so clearly within the foregoing principles governing suits of this nature as to leave no room for doubt.

POINT V

THIS CASE IS NOT CONTROLLED BY CITY BANK FARMERS' TRUST CO. VS. SCHNADER

The difference in the position of respondents in a suit brought under the Interpleader Act and that of defendants in an injunction suit brought under section 266 of the Judicial Code is, of course, an important element to keep in mind. In the latter there is but a single group of State officials and a single purpose to be attained, and that is to enjoin that group from carrying out some alleged unauthorized act, while in the former there are two groups of officials and there are two purposes, viz., (a) to enjoin the group acting wrongfully; and (b) to determine the tax due to the group, or to put it a little more accurately, due to the State whose officers have been found to have acted rightfully.

The case of *City Bank Farmers' Trust Co.* vs. *Schnader*, 291 U. S. 24, 293 U. S. 112, a proceeding in which it was sought to enjoin the taxing officials of the State of Penn-

sylvania from collecting a nonresident tax on the transfer of tangible personal property having a physical situs within that State is, therefore, clearly distinguishable from the instant matter. While this court upheld the jurisdiction of the District Court under section 266 of the Judicial Code (291 U. S. 24), the bill, nevertheless, on the merits, was finally dismissed (293 U. S. 112). Had it been determined that the defendants in that suit were acting improperly in their attempt to tax the transfer of the tangible personal property, permanent injunction would, of course, have issued against them, but only as individuals. Because they were acting properly and, therefore, for the State which they represented, the bill was dismissed. Whatever the disposition may be of such a case, it is clear that a State is never drawn into the litigation. Not so, however, in the case of an interpleader suit, because that group of officers which is ultimately determined to be acting properly, or rather the State for which they are acting, is entitled to a money decree to the extent of the tax found to be due to it and that State must, therefore, be brought into the suit if the litigation is to be completely terminated by awarding judgment for the successful claimant.

POINT VI

THE INTERPLEADER ACT, AS AMENDED, WAS NEVER INTENDED TO APPLY TO A SUIT OF THE NATURE OF THE ONE *SUB JUDICE*

There is no question but that this section of the Code, from the date of its first enactment on February 22, 1917 (c. 113, 39 Stat. 929), through intermediate amendments (February 25, 1925, c. 317, 43 Stat. 976; May 8, 1926, c. 273, 44 Stat. 416), down to the amendment of January 20, 1936 (c. 13, 49 Stat. 1096) was available only to insurance com-

panies or associations, and fraternal or beneficial societies. The only question, therefore, is whether Congress, under the last amendment by which it extended the benefits of the act to "any person, firm, corporation, association, or society," intended that it should encompass a suit by an executor or administrator against the taxing officials of two or more States for the purpose of judicially determining the legal domicile of a decedent and the State to which domiciliary taxes are payable.

There is nothing in the reports of the committees on the judiciary of Congress (9878 Senate Rep., Report No. 558; 9888 House Rep., Report No. 1437) which even remotely intimates that one of the purposes of the amendment was to provide a solution of the dual-domicile problem.

That the amendment was never intended to provide a forum for the settlement of disputes as to domicile is a logical inference, deducible from the absence of the usual protective and expediential measures generally thrown around suits in federal courts in which the actions of State officers are attacked. The trend of federal legislation for a great many years has been toward a reduction, rather than an extension, of the power of the lower federal courts in matters in which the States are essentially, even though not *eo nomine*, the real parties in interest. Under section 266 of the Judicial Code (U. S. C. Title 28, sec. 380) application for interlocutory as well as permanent injunction to restrain the action of any State officer must be heard and determined by three judges, at least one of whom shall be a justice of the Supreme Court or a Circuit Court judge, and for injunction to issue, a majority of the three judges must concur in granting the application. The same section also provides for direct appeal to this court from interlocutory or final orders granting or denying injunction, and for a stay of the federal proceeding at any time before final hearing if a suit shall be brought and diligently prosecuted in a State court. And under section 24 (1) of the Judicial

Code, as amended May 14, 1934 (c. 283, sec. 1, 48 Stat. 775), the power of the District Courts to issue injunctions in rate cases is taken away where there is a plain, speedy and efficient remedy at law or in equity in the State courts. And section 265 of the Judicial Code (U. S. C. Title 28, sec. 379) —legislation of long-standing—precludes the granting of injunctions to stay proceedings in any State court, excepting bankruptcy matters.

Hill vs. *Martin,* 296 U. S. 393.

That the pendulum continues to swing in this direction is evidenced by the fact that Congress in the last days of the past session amended section 24(1) of the Judicial Code so as to deprive the lower federal courts of the power to enjoin, suspend or restrain the assessment, levy or collection of any State tax where a plain, speedy and efficient remedy may be had in law or in equity in the State courts (Act of Cong. August 21, 1937, Public No. 332, c. 726). Although not applicable to the instant case, because of a savings clause as to suits already instituted, this legislation would appear, nevertheless, to be a barrier to future litigation under section 266 of the Judicial Code, and proceedings of the nature of the instant one to invoke the provisions of the interpleader section, at least where it can be established that there is a plain, speedy and efficient remedy available to the taxpayer in the State courts. In any event, it is in furtherance of the apparent policy of the Congress to leave original jurisdiction in essentially State matters to the State courts.

All of these provisions, peculiar to proceedings against State officers, are lightly brushed aside if the interpleader section of the Code be held to apply to cases of the type here involved. Under that section the case is tried in the United States District Court before a single district judge; the review is by appeal to the Circuit Court; and, instead

of affording trial of the issue in the State courts, with stay of the federal proceeding as provided by sections 24(1) and 266 of the Judicial Code, the act directs that the District Court shall have power to issue its order against claimants, enjoining them from instituting or prosecuting any suit or proceeding in any State court, any other provisions of Part I of Title 28 of the United States Code to the contrary notwithstanding. It is also to be remembered that State officers may be subjected to suit under section 266 of the Judicial Code only in the jurisdiction in which they reside, whereas here we find the process of the District Court of Massachusetts extending to officers of the State of California, residing, of course, in that State.

The weakness of the claim that this legislation may be so construed as to authorize jurisdiction over domiciliary tax disputes is clearly pointed out by the District Court and in the dissenting opinion of Judge Morton in the Circuit Court. Both appreciating, because of the inherent nature of interpleader, that a State must ultimately be drawn into the litigation, and that the lower federal courts may not, of course, proceed further when this comes to pass, suggest what seem to be novel solutions to the difficulty. The District Court frankly concedes that it may not go so far as to wholly adjudicate the rights of the respective parties in the fund attempted to be interpleaded. District Judge Brewster says (R. 37):

> "* * * It may be that ultimately the court will not be able to grant all the relief prayed for in the bill of interpleader, * * *. I do not think the court, in these proceedings, can go so far as to adjudicate the exact amount of the tax due to each State. It can only decide whether the decedent was a resident of Massachusetts or of California, * * *."

And Circuit Judge Morton would terminate the litigation by *dismissing* the suit as to the *successful group of claimants* and permanently enjoining the unsuccessful group. The reasoning supporting this disposition is set forth in the following excerpt from his opinion (R. 58):

> "* * * As to one or the other of the claimants, the plaintiff's allegation that he is acting unconstitutionally and in violation of law, is bound to fail, and as to that one the suit will then be dismissed because he will be, legally speaking, the State, of which he is an official acting in the proper performance of his legal duty; as to the other, it will appear that he is acting unconstitutionally and illegally. * * * "

What, under either solution, is to happen to the fund interpleaded, and how is the successful group of claimants to collect its tax? The only logical conclusion, as to the question of collection, is that the successful group of claimants is to be left unmolested in the assessment and collection of the tax in the same manner as if the interpleader suit had not been brought. It is not reasonable to suppose that the Congress intended to provide for interpleader in a case where the complainant could not be discharged from all liability to the successful claimant as well as to the unsuccessful one (Compare, *Connecticut General Life Insurance Co.* vs. *Yaw*, 53 F. (2d) 684, at p. 686), or for the piecemeal disposition of litigation. If the federal Interpleader Act was intended to be used simply for the purpose of ascertaining the legal domicile of complainant's testator, without a money decree for the successful claimant, it would seem that more specific words to accomplish that extraordinary end would have been used.

And there is the further question as to whether there are, in fact, "adverse claimants" present in this litigation. The inference is reasonable, from this court's denial of the right to file an original bill in the case of *New Jersey* vs. *Penn-*

sylvania, 287 U. S. 580, that the controversy in these dual-domicile cases, at least in the absence of special allegations (see *Texas* vs. *New York,* 300 U. S. 642, 643), is one of fact and law between the legal representative of the decedent and each of the claiming States and not between the States. And, incidentally, it has been said that interpleader was never intended to permit a court of equity to decide such issues arising between the complainant and those asserting claims to the property in dispute.

> *Pacific Mutual Life Ins. Co.* vs. *Lusk,* 46 F. (2d) 505, 509.

The present bill appears, in the final analysis, to be nothing more than a bill for injunction without complying with the various procedural requirements of the Judicial Code respecting actions against State officers. As conceded by the District Court and by Circuit Judge Morton, the lower federal courts in this type of suit may not go to the extent of determining the amount of the domiciliary tax and of awarding a money decree to the successful claimant. If jurisdiction exists, the court must finally dispose of the litigation by dismissing the bill as to the successful claimant, and permanently enjoining the unsuccessful ones. No decree awarding the fund and absolving the complainant from all further liability to all claimants can be entered. The ultimate object of the bill, therefore, can be nothing more than a permanent injunction against the claimants representing the non-domiciliary State.

District Judge Brewster and Judge Morton in extending the Interpleader Act to the instant situation violate a controlling principle of construction. The basis of their determination—the principle upon which the result is predicated—is found in the following excerpt from Judge Morton's dissenting opinion (R. 59):

> "* * * I think this statute should receive a liberal interpretation, and that on points which are at best rather technical and procedural in character, *doubt should be resolved in favor of jurisdiction under this statute,* which appears to be the only practical method of remedying the evil. * * *"

Of course, the applicable rule is to the contrary. As said by this court in speaking of the jurisdiction of a lower federal court:

> "* * * A cause is presumed to be without its jurisdiction unless the contrary affirmatively appears; * * *"
>
> *Thomas* vs. *Board of Trustees,* 195 U. S. 207, 210.

> "* * * it (jurisdiction) ought not to be extended by doubtful construction."
>
> *Elgin* vs. *Marshall,* 106 U. S. 578, 580.

The application of this principle is of particular significance here, since to liberally construe this legislation so as to permit the impleading of individuals against a State is to imply that Congress deliberately intended to pass an unconstitutional statute. To so imply, runs counter to the "strong presumption that the law-making body intended to act within, and not in excess of, its constitutional authority."

> *Plymouth Coal Co.* vs. *Pennsylvania,* 232 U. S. 531, 546.

While perhaps not a determining factor, it is interesting to note, in closing, that complainant would extricate itself from its alleged difficult situation by a form of proceeding which would impose upon the State entitled to collect a domiciliary tax the burden of paying complainant's costs

and a reasonable attorney's fee (see par. 7 of the prayer of the bill, R. 6). This presents the interesting question as to whether a State may be compelled to accept an amount less than the full sum of the tax to which it is lawfully entitled and to discharge the taxpayer of all further liability therefor.

It is respectfully submitted that power of such far-reaching effect and so directly in conflict with the well-established policy of Congress in regard to matters in which the States and their officers are involved, should not arise from mere inference. This section of the Judicial Code originated primarily as an aid to insurance companies, and there is nothing in the language of the amendments thereof which indicates that the section was ever intended to apply to disputed domicile cases.

CONCLUSION

There is every evidence in the opinion of the Circuit Court of Appeals of an exhaustive study of the problem presented, and in reaching the conclusion that it did it has applied only those principles which have been well-established by the repeated decisions of this court. It is respectfully submitted, therefore, that the Circuit Court of Appeals' determination properly resolves the question, and that the determination of that court should in all respects be affirmed.

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SUPREME COURT OF THE UNITED STATES.

No. 34.—October Term, 1937.

Worcester County Trust Company, Executor, Petitioner, *vs.* Ray L. Riley, Controller of the State of California, et al.	On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[December 6, 1937.]

Mr. Justice Stone delivered the opinion of the Court.

The question for decision is whether the Federal Interpleader Act, § 24 (26) of the Judicial Code as amended January 20, 1936, c. 13, § 1, 49 Stat. 1096, may be availed of for the litigation and final disposition of the rival claims of two states, each asserting through its officers the right to recover death taxes on the ground that decedent was last domiciled within its boundaries.

Petitioner is the duly qualified executor named in the last will of decedent, which has been probated in Massachusetts. Ancillary administration of the estate has been granted in California. Petitioner brought the present suit in the District Court for Massachusetts, joining as defendants Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts, and respondents, officers of the State of California, all charged with the duty of administering death tax statutes of their respective states. The bill of complaint is founded upon the Interpleader Act and seeks the remedy which it affords.

Section 24 (26) confers jurisdiction on the district courts in suits of interpleader or in the nature of interpleader, by plaintiffs who are under an obligation to the amount of $500 or more, the benefits of which are demanded by two or more adverse claimants who are citizens of different states. By subsection 26 (a) "Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another." And by subsection 26 (a) (ii) and (d) complainant, upon satisfying jurisdictional requirements of the Act, and depositing the money or property in the registry of the court, or upon giving a prescribed bond,

is entitled to a decree discharging him from further liability and enjoining the claimants from further proceedings in other courts to recover the sum claimed.

The bill of complaint alleges that decedent left bank deposits and other intangibles in California and Massachusetts, a substantial part of which has come into the possession or custody of petitioner; that respondents, the California taxing officials, have determined and assert that decedent at death was domiciled in California, and that under the law of that state his estate is subject to death taxes upon all his intangibles; that respondents threaten to assess and collect there a tax in excess of any which would be due if decedent were domiciled in Massachusetts; that the Massachusetts Commissioner, in behalf of the state, asserts a similar claim that decedent at death was domiciled in Massachusetts, and that his estate is subject to taxes there upon all his intangibles; that it is impossible in law and in fact for decedent to have been domiciled in both states at the time of his death, or for his estate to be subject to death taxes in both states as asserted; and that the attempted collection of the tax is a threatened deprivation of property without due process of law and a denial of equal protection of the laws. Petitioner prays that the Court order respondent officials of the two states to interplead their respective claims for the tax; that the Court determine the domicil of decedent, the amount of the tax, and the person or persons to whom it is payable; and that respondents be enjoined from any other proceedings to collect it.

Respondents, the California officers, appeared specially and moved to dismiss the complaint upon the ground, among others, that the suit was brought against respondents in their official capacity, and was in substance a suit against the state forbidden by the Eleventh Amendment. The district court overruled this contention and granted a temporary injunction restraining defendants until further order of the court, from taking any action to assess the tax. The Court of Appeals for the First Circuit reversed, 89 F. (2d) 59, holding that the maintenance of the suit is an infringement of the Eleventh Amendment, which provides that "The judicial power . . . shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state. . . . " We granted certiorari, 299 U. S. 567, the decision below being of an important question of federal law which has not been but should be settled by this Court. Supreme Court Rules, 38 (5) (b).

Petitioner does not deny that a suit nominally against individuals, but restraining or otherwise affecting their action as state officers, may be in substance a suit against the state, which the Constitution forbids, *Louisiana* v. *Jumel*, 107 U. S. 711; *Hagood* v. *Southern*, 117 U. S. 52; *In re Ayers*, 123 U. S. 443; *North Carolina* v. *Temple*, 134 U. S. 22, 30; *Smith* v. *Reeves*, 178 U. S. 436; *Lankford* v. *Platte Iron Works*, 235 U. S. 461; *Ex parte State of New York, No. 1*, 256 U. S. 490, 500; *Missouri* v. *Fiske*, 290 U. S. 18, 28; see *Cunningham* v. *Macon & Brunswick R. Co.*, 109 U. S. 446; cf. *Wells* v. *Roper*, 246 U. S. 335, or that generally suits to restrain action of state officials can, consistently with the constitutional prohibition, be prosecuted only when the action sought to be restrained is without the authority of state law or contravenes the statutes or Constitution of the United States. Cf. *Ex parte Young*, 209 U. S. 123; *Scully* v. *Bird*, 209 U. S. 481; *Old Colony Trust Co.* v. *Seattle*, 271 U. S. 426, with *Louisiana* v. *Jumel, supra; Hagood* v. *Southern, supra; In re Ayers, supra; Lankford* v. *Platte Iron Works, supra.* The Eleventh Amendment, which denies to the citizen the right to resort to a federal court to compel or restrain state action, does not preclude suit against a wrongdoer merely because he asserts that his acts are within an official authority which the state does not confer.

Petitioner's contention is that here the prospective official action of respondents involves a threatened violation of the Constitution for which state law can afford no sanction. It is said that as the officers of each state assert the right to collect the tax out of decedent's property within the state, they may succeed in establishing that right by a judicial determination in each that decedent was last domiciled there, cf. *Dorrance's Estate*, 309 Pa. 151; *In re Estate of Dorrance*, 115 N. J. Eq. 268; 116 N. J. Eq. 204, with *New Jersey* v. *Pennsylvania*, 287 U. S. 580; *Dorrance* v. *Pennsylvania*, 287 U. S. 660; *Hill* v. *Martin*, 296 U. S. 393, although he could not be domiciled in both; that neither state could constitutionally authorize its officials to impose the tax if decedent was last domiciled elsewhere, and petitioner is thus exposed to the danger of double taxation, which the Constitution forbids. See *First National Bank* v. *Maine*, 284 U. S. 312; *Farmers Loan & Trust Co.* v. *Minnesota*, 280 U. S. 204. As those officials threaten acts whose consequence may be taxation which is unauthorized by any valid state enactment, petitioner insists that the suit brought to restrain such action does not run against the state.

But this argument confuses the possibility of conflict of decisions of the courts of the two states, which the Constitution does not forestall, with other types of action by state officers which, because it passes beyond the limits of a lawful authority, is within the reach of the federal judicial power notwithstanding the Eleventh Amendment. This Court has held that state statutes, construed to impose death taxes upon the intangibles of decedents domiciled elsewhere, infringe the Fourteenth Amendment, and it has accordingly reversed judgments of state courts enforcing such liability. *First National Bank* v. *Maine, supra; Farmers Loan & Trust Co.* v. *Minnesota, supra.* But petitioner does not assert that there are such statutes in California or Massachusetts, or that the courts in those states have ever held or threaten to hold that their laws taxing inheritances apply to intangibles of those domiciled in other states.

Although the bill of complaint states that respondents California officials "have determined" that decedent was domiciled in California, it is not contended that they have or are assuming authority to assess the tax, independently of the judgment of a court. Under California statutes, inheritance taxes are assessed by judicial proceedings resulting, after full opportunity for presentation of evidence and a hearing, in a judgment which is reviewable on appeal by the state courts, and by this Court if it involves any denial of federal right. §§ 14, 15, 16, 17 and 18, Cal. Inheritance Tax Act of June 3, 1921, Stats. 1921, p. 1500, as amended; see *Stebbins* v. *Riley,* 268 U. S. 137; *Estate of Haskins,* 170 Cal. 267; *Estate of Brown,* 196 Cal. 114.

Petitioner does not contend that respondents, the California officers, propose to do more than invoke the action of its courts to assess a lawful tax and to seek there a judicial determination that decedent was domiciled in California as the basis of its power to impose the tax. Nor is it denied that in so doing they are acting in the performance of official duty imposed upon them by state statutes, which conform to all constitutional requirements. Petitioner's real concern is that the judgment of the California court, if it should decide that decedent was domiciled there, may be erroneous or may conflict with that of the Massachusetts courts. But conflicting decisions upon the same issue of fact do not necessarily connote erroneous judicial action. Differences in proof and

the latitude necessarily allowed to the trier of fact in each case to weigh and draw inferences from evidence and to pass upon the credibility of witnesses, might lead an appellate court to conclude that in none is the judgment erroneous. In any case the Constitution of the United States does not guarantee that the decision of state courts shall be free from error, *Central Land Co.* v. *Laidley*, 159 U. S. 103; *Tracy* v. *Ginzberg*, 205 U. S. 170, or require that pronouncements shall be consistent. *Milwaukee Electric Railway & Light Co.* v. *Wisconsin*, 252 U. S. 100, 106. Neither the Fourteenth Amendment nor the full faith and credit clause requires uniformity in the decisions of the courts of different states as to the place of domicil, where the exertion of state power is dependent upon domicil within its boundaries. *Thormann* v. *Frame*, 176 U. S. 350; *Overby* v. *Gordon*, 177 U. S. 214; *Burbank* v. *Ernst*, 232 U. S. 162; *Baker* v. *Baker, Eccles & Co.*, 242 U. S. 394; *Iowa* v. *Slimmer*, 248 U. S. 115, 120, 121; cf. *Tilt* v. *Kelsey*, 207 U. S. 43. Hence it cannot be said that the threatened action of respondents involves any breach of state law or of the laws or Constitution of the United States. Since the proposed action is the performance of a duty imposed by the statute of the state upon state officials through whom alone the state can act, restraint of their action, which the bill of complaint prays, is restraint of state action, and the suit is in substance one against the state which the Eleventh Amendment forbids. We do not pass on the construction of the Interpleader Act or its applicability in other respects.

Unlike that in *Ex parte Young*, *supra*, and in the many cases which have followed it, the present suit is not founded on the asserted unconstitutionality of any state statute and the consequent want of lawful authority for official action taken under it. In *City Bank Farmers Trust Co.* v. *Schnader*, 291 U. S. 24, on which petitioner relies, it was held that the bill of complaint stated a cause of action in equity to enjoin a state official from proceeding to assess and collect an inheritance tax upon chattels alleged to have no tax situs within the state. The objection that the suit was one against the state within the meaning of the Eleventh Amendment was not urged or considered on the appeal to this Court.

Affirmed.